

Creditors Can Reach Benefits Under “Top Hat” Plan, United States District Court of Maryland Rules

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A familiar feature of ERISA is its protection of a participant’s retirement savings from creditors; ERISA requires that pension plans contain an anti-alienation provision. However, unfunded deferred compensation plans for high-level executive employees, generally known as “top hat” plans, are exempt from ERISA’s mandate. But what if a “top hat” plan has an anti-alienation provision in it anyway? Can this provision trump state garnishment laws under the ERISA preemption umbrella?

The United States District Court for the District of Maryland answered “No.” In [*Sposato v. First Mariner Bank*, 2013 WL 1308582 \(D. Md. March 29, 2013\)](#), Plaintiff, a former executive of Cecil Bank, was a participant of Cecil Bank’s Supplemental Executive Retirement Plan, a “top hat” plan. The Plan provided that benefits “under the Plan may not be alienated, assigned, [or] transferred Benefits shall be exempt from the claims of creditors or other claimants of the Participant ... and from all ... garnishment or execution

The defendant, a creditor of Plaintiff, sought to garnish Plaintiff’s benefits under the Plan. After recognizing that the Plan was exempt from ERISA’s anti-alienation provision mandate, the Court went on to address whether the terms of the Plan controlled over Maryland’s garnishment laws by virtue of ERISA’s preemption section 514. In holding in favor of the creditor, the Court relied upon the United States Supreme Court decision of [*Mackey v. Lanier Collection Agency & Service, Inc.*, 486 U.S. 825, 108 S. Ct. 2182 \(1988\)](#), which held that ERISA did not preempt state garnishment laws that simply provided a procedural device for enforcing a judgment. As to the Participant’s argument that garnishment would violate the terms of the Plan, the Court held that the creditor’s rights were not subject to the terms of the Plan, which was a contract solely between the Plan sponsor and the Participant.

Because the creditor in *Sposato* sought garnishment of benefits as they become due and payable to the Participant, the Court resisted speculating about the issues that could arise if a participant’s creditor sought to collect before the deferred compensation was due, leaving that question for another day.

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